

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
EASTERN DIVISION

No. 4:17-CR-18-1H

UNITED STATES OF AMERICA,

v.

JERMAINE LAMONT HALE,  
Defendant.

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**ORDER**

This matter is before the court on defendant's motion to dismiss the three count indictment in this matter, arguing the indictment violates the Fifth Amendment's Double Jeopardy Clause because the conduct constituting the basis for the indictment in the instant federal case is the same conduct that was at issue in a prior state conviction. [DE #22 Ex. 1].

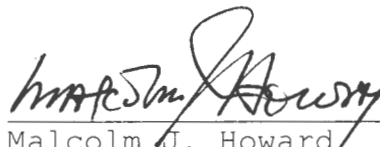
The Double Jeopardy Clause provides that no person shall "be subject for the same offence to be twice put in jeopardy of life or limb." U.S. Const. amend. V. Defendant acknowledges, however, that his argument is currently foreclosed. Prosecution in both federal and state court for exactly the same criminal conduct is not, at this time, double jeopardy. See, e.g., Heath v. Alabama, 474 U.S. 82, 88 (1985).

However, as detailed in the motion, defendant files this motion to preserve defendant's right to challenge any successive convictions and punishment he receives for the charged criminal conduct, after he was convicted and punished for the same conduct

in a separate criminal proceeding in Halifax County, North Carolina, on or about March 6, 2017.

The government does not respond to defendant's motion. The court, noting defendant's concession that his argument is currently without merit, DENIES the motion to dismiss [DE #22] and notes defendant's objection for the record.

This 17<sup>th</sup> day of May 2019.

A handwritten signature in black ink, appearing to read "Malcolm J. Howard", written over a horizontal line.

Malcolm J. Howard  
Senior United States District Judge

At Greenville, NC  
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